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consequence of making inconsistent statements for the purpose of wrongfully fixing crime upon another, and thereby shielding himself, but rather to protect from prosecutions based upon affirmative evidence as to transactions which involve the witness with others in questionable proceedings." The lack of the element of compulsion is to be remarked in this case as distinguishing it from apparently antagonistic cases.

Banks—Damages for a Refusal, Through Mistake, to Cash a Check.—*Schaffner v. Ehrman*, 28 N. E. 917 (Ill). Through a cashier's mistake the appellee's deposit at appellant's bank appeared to be less than it was, and in consequence four of the appellee's checks were returned through the clearing house marked, "Refused for want of funds." No actual malice or fraud on the part of the bank, or special injury to appellee was shown, but the court, citing *Prelin v. Bank*, L. R. 5 Exch. 92, and *Patterson v. Bank*, 130 Pa. St. 419, was of the opinion that the case contained the elements of slander, viz.: (1) a tendency to bring the appellee into disrepute, and (2) malice. The returning of the marked checks would naturally tend to bring a trader into disrepute and materially damage his credit, and the fact that he is a trader takes the place of special damages. All the elements of legal malice were present, the refusal was intentional and without just excuse. The court therefore held that there was no error in the award of substantial damages. There was, however, one dissenting vote, Craig, J., holding that the action, though in form tort, was founded upon a contract and therefore the plaintiff was only entitled to recover such damage as the evidence might show he had sustained.

Construction of Wills—Amount of Legacy.—*Bush v. Couchman*, 17 S. W. Rep. 1020 (Ky.) was an action by the widow of a testator to recover rent for certain land, under the following codicil: "I desire my said wife, in addition to the \$3,000 given to her in my will, to have a sum equivalent to the rent of the land derived by her from her father's estate, and which I have used or received rent from ever since it became her property." The main difficulty was to determine the meaning of the word rent and whether the recovery should be confined to the amount due up to the date of the will or to the death of the testator. The executor interpreted the word rent to include only net rent, viz.: the amount left after deducting the expense of repairs, taxes, etc. The court held that she was not seeking to recover the amount of rent due to her

from the testator for the use of the land by him—for to this she had no legal right—but a bequest of a sum of money equivalent to that rent, and she was in consequence entitled to the whole rental value of the land. “As the will takes effect at the death of the testator, and not at the date of the will, unless it appears that it was so intended—and as it does not so appear in this case—it was right to estimate the rent to the time of the death of the testator.”

Torts of Employees—Liability of Principal.—In *Gillingham v. Ohio River Railroad Co.* 14 S. E. Rep. 243 (W. Va.), the conductor of the defendant's train caused the arrest of the plaintiff, who at the time of arrest was an orderly and well behaved passenger. The arrest was made by a police officer upon the request and under the directions of the conductor, who was mistaken in supposing the plaintiff to be the person who a short time before had made an assault upon him. The arrest was insisted upon by the conductor, although the plaintiff and a fellow passenger stated that he (the plaintiff) was not the person who had made the assault. Both the assault and the arrest were made at a time when the conductor was not required or expected by the defendant to perform duties as a conductor, but he was on and about the train acting in that capacity. The conductor testified at the trial that the act of pointing out the plaintiff to the officer who made the arrest was a personal one, and that the arrest was made while he was off duty as a conductor. However, it was held that, he being on the train, and acting and speaking as one in charge, receiving passengers and making reading to start, the defendant was responsible for his acts consistent with his duties as a conductor.